

# NEW HAMPSHIRE STATE BUILDING CODE REVIEW BOARD

## *Minutes of Meeting*

June 8, 2007

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### Attendance:

Med Kopczynski, NH Municipal Association, acting Chairman  
Wayne A. Richardson, NH Building Officials Association, municipal building official  
Jerry Tepe, Board of Architects, licensed architect  
James Petersen, PE, Board of Engineers, licensed mechanical engineer  
Jon Osgood, Public Utilities Commission, state energy conservation code office  
Rick Swain, NH Plumbing & Mechanical Contractors Assoc., mechanical contractor, business  
Mark Weissflog, NH Electrical Contractors Business Assoc., licensed master electrician  
Mike Santa, CBO, Governor's Commission on Disability, Architectural barrier/free design  
Fred Baybutt, Associated General Contractors, building contractor - non-residential bldgs.  
Tedd Evans, Board for Licensing and Regulation of Plumbers, licensed master plumber  
John Tuttle, NH Home Builders Association, Architectural designer - residential  
Thomas Lambert, Chief, NH Association of Fire Chiefs, Municipal Fire  
Laura A. Black, PE - Board of Engineers, licensed electrical engineer

### Excused:

Senator Robert Clegg, Chairman, designee for Dept of Safety  
Joel Fisher, Board of Engineers, licensed structural engineer

### Absent:

Thomas Malley, Bureau of Electrical Safety and Licensing, licensed master electrician  
Mark Tibbetts, NH Association of Fire Chiefs, municipal volunteer fire chief

### Guest:

Marta Modigliani, Legal Counsel, Office of the Commissioner Dept of Safety  
Friedrich Moeckel, Legal Counsel, Tarbell & Brodich for Vinewood Development Company

Acting Chair Med Kopczynski declared the meeting open with a quorum of Board members present.

Chairman Kopczynski asked for a **MOTION** to move the Public Hearing agenda item to the last item on the agenda. Wayne Richardson so **MOVED** to amend the agenda. Mike Santa **SECONDED** the **MOTION**. Vote taken was **UNANIMOUS** to amend the agenda.

### **GENERAL MEETING**

Adoption of meeting minutes from April 13, 2007:

**MOTION** to adopt the meeting minutes from April 13, 2007 was made by Mike Santa. Wayne Richardson **SECONDED** the **MOTION** to adopt the minutes. There being no discussion - vote was taken. Vote was **UNANIMOUS to adopt the minutes** and so declared adopted by the Chair.

## OLD BUSINESS

### Update on SB 81:

Jon Osgood spoke with the Governors office yesterday - and it is coming to their desk - and they will be signing it sometime. The effective date will be 60 days after passage, which will be 60 days after the Governor has signed it. Jerry Tepe mentioned that once the 60 days are there - this is when the question of amendments and how they are dealt with.

### Energy Code compliance discussion:

Acting Chair tabled this agenda item until a future date.

### FAQ errors/Section on website:

Nothing is known on revisions. Jerry stated that this has been on-going since they pulled it down to make the revisions - and if they are finalized they will be put back up.

### Investigative report - Zambrowicz residence:

Rick Swain issued a final report of their investigation. It is as follows, as read by the Chair:

*On Thursday, March 15<sup>th</sup> the Building Code Review Board received a complaint from Heather and Bruce Zambrowicz concerning an incident that occurred at their resident in Sandown, NH. On February 23, 2007, their 2 year old son Camden, fell through a floor opening in the first floor dining room. The HVAC floor return grille had been removed. Camden stepped into the hold and was standing on the return air panning that spans the bottom of the floor bay. The panning was a composite material known as Thermo-pan. The panning material separated from the floor joists and the boy fell 9 feet to the concrete basement floor. He was sent to Parkland Medical Center and was luckily released with only minor injuries.*

*On Tuesday, March 20<sup>th</sup>, I conducted a site visit at the Zambrowicz residence in Sandown, NH. The home's HVAC system utilizes floor joist bays for return air plenums. The dining room return air was a standard 8" x 10" floor return grille manufactured by Hart and Cooley. These registers are set into the floor opening and are easily removable. The panning material had not been repaired when I inspected. The Thermo-pan material is an aluminum-clad corrugated cardboard panel that is attached to the underside of the floor joists making the floor bay a return air plenum. It was attached with zip screws commonly used to assemble ductwork. The panning ripped out of the screws at one end of the duct dropping Camden to the basement floor.*

*In reviewing the manufacturer's installation instructions, it indicates that the fasteners are required to be installed with a maximum 4" spacing. The screws attaching the panning to the joists were spaced 8" to 10" apart. Proper attachment would have reduced the probability of the incident occurring.*

## NEW BUSINESS

Rick Swain tendered his resignation from the Board. Rick needs to spend more time in his business and less time with this Board. A **MOTION** was made by Mike Santa to show some sort of

appreciation to Rick for his many years serving on the Board. **MOTION** was duly **SECONDED** by someone. Board voted **UNANIMOUSLY** in favor of the **MOTION**. Rick stated that it was a real pleasure working on the Board and he has learned a lot.

Tedd Evans wanted the Board to know that he had heard from Tom Malley and he will be joining us back on the Board. Evvy will put him back on the list for communications.

## **PUBLIC HEARING**

Chairman Kopczynski opened the Public Hearing by stating there are a few items that should be addressed before the Hearing begins. Prior to opening the Hearing, there have been 3 **MOTIONS** that have been made, 2 **MOTIONS** by the State, and 1 **MOTION** made by Vinewood Development. John Tuttle reported for the record that he is a member of NH State Home Builders Association, and Vinewood Development is a member of that Association. Chairman Kopczynski asked if he thought he would be conflicted. John reported no. Chair then asked the Board is any member thought he might be conflicted. No member thought so. Mark Weissflog also reported for the record that he is a member of the NH State Home Builders Association. He stated that he would not be conflicted. No one from the Board or the State or Vinewood believed that either member would be conflicted.

Chairman Kopczynski had Attorney Moeckel and Attorney Modigliani swear under Oath that what they were saying was the truth the whole truth, and nothing but the truth.

Attorney Friederich Moeckel, of Tarbell & Brodich Professional Association spoke concerning the Vinewood's **MOTION** in simplest terms says that this Board does not have the authority to hear Vinewood's appeal. To expedite this hearing recommendations were made to have the Board hear this **MOTION** first because it is dispositive of any other issues before the Board.

Attorney Marta Modigliani, legal counsel for the State Fire Marshal's office, responded that the facts in Fisher were different than here in the Vinewood case. The subject matter jurisdiction is stated in the statute and in the Board's own Rules. Unless an exception or variance has been granted or denied by the Fire Marshal's office - it does not come before this Board.

Attorney Moeckel responded stated that the Fire Marshal's Administrative Rules, they can take the State's position, there is no appellate process for the Fire Marshal's decision, because the Rules are clear - you can appeal, request for exceptions, and variances only. You take the State's position, there is no route of appeal. And that is why it makes sense in Fisher that the applicant to this Board to review the decision of the State Fire Marshal.

Attorney Modigliani responded that the Department of Safety has adopted an Saf-C 6006.01 The Use of Department Procedures - unless otherwise provided herein, all hearings conducted by the State Fire Marshal's office, shall be conducted in accordance with the general Dept of Safety procedures for conducting Hearings contained in Saf-C 200, which are the Procedural and Hearing Requirements for the Department of Safety, of which the Division of Fire Safety and the Fire Marshal's Office is a Division therein. These Rules were effective Sept 23, 2004.

Attorney Moeckel responded that Attorney Modigliani is correct. That under those Rules the only 2 kinds of hearings under those Rules are for exceptions and for variances.

155-A:11 - Appeals of the decisions of the State Fire Marshal. The Board will hear appeals of variances or exceptions to the State Fire Code which have been granted or denied by the State Fire Marshal, or the State Fire Marshal's designee, and appeals of a decision of the State Fire Marshal, or the State Fire Marshal's designee in enforcing provisions of the State's Building Code pursuant to RSA 155-A: 7(1).

RSA 155-A:7(1) - Local Enforcement Agency Appointed pursuant to RSA 674:51 shall have the authority to enforce the provisions of the state building code, however, that where there is no building inspector the State Fire Marshal or the State Fire Marshal designee shall have the authority to enforce the provisions of the State Building Code - subject to the review provisions contained in RSA 155-A:10.

Mark Weissflog made a **MOTION** to go into Attorney Client - Privilege session. John Tuttle **SECONDED** the **MOTION**. The Board voted **UNANIMOUSLY** to go into Attorney Client Privilege.

Chairman Kopczynski reconvened the Public Hearing. Asked the Board if they wanted to take the **MOTION** under advisement at this time. Tedd Evans so **MOVED**. Jerry Tepe **SECONDED**. Vote taken was **UNANIMOUS** in favor of the **MOTION** to continue. Marta spoke for the reasons for the continuance as: The Boards Rules require a 15 days prior to the scheduling of a hearing - and based on the date that the NOTICE OF HEARING was signed - believe that the 15<sup>th</sup> day would have been today and no hearing should have been scheduled prior to the 11<sup>th</sup>. The 2<sup>nd</sup> reason is that the NOTICE OF HEARING was never received at the State Fire Marshal's Office until it was faxed to the office on June 1<sup>st</sup>, which gave the State less than a week to present itself.

Chairman Kopczynski recognized Attorney Moeckel. Attorney Moeckel filed an OBJECTION TO MOTION TO CONTINUE and spoke for the reasons for the objection as: they believe the Administrative Rules and the mailing requirements. One says file 15 days before the Hearing - and the NOTICE OF HEARING is dated the 24<sup>th</sup> of May and that is 15 days actually 16 days. The mailing requirement when the public looks at the Administrative Rules - there are addresses provided for the Fire Marshal and the Building Code Review Board and they happen to be the same. He understands that there is an in-house mailing system that is used - but can not speak on that for the secretary. Vinewood Development builds homes. Time is of the essence and this is the building season.

Chairman Kopczynski stated that he is of the opinion that if needed this Board would hold a Special Meeting to meet this obligation for a full discussion hearing.

#### QUESTIONS OF THE STATE:

Mark Weissflog asked what the procedure was in the State notifying the State that there is a hearing - what is the procedure? Marta answered that it was not the fact that they did not get the NOTICE by mail - it was because they did not get the NOTICE at all.

Jon Osgood said he is mystified that the FMO had no knowledge of this proceeding. Did they not receive the pleading from Vinewood? Marta answered that they did receive the copy of the APPEAL - but the NOTICE OF HEARING was not received until just a week ago.

John Tuttle asked where do these notices get posted? Chairman Kopczynski replied he did not know.

Jon Osgood asked if we have proof that the NOTICE OF HEARING was transmitted to the FMO rather than received? The Chairman stated there was nothing in the file. He understood that they were sent Certified Mail. Chairman Kopczynski asked Evvy under oath, where the NOTICES OF HEARINGS are posted. They are posted on the Building Code website, at the State House, and posted at the Fire Academy. The Safety messenger physically puts them up at each location. The NOTICE OF HEARING was mailed out to each Board member via US mail - and to Vinewood via their attorney by Certified Mail and to the State Fire Marshal thru their mail slot in the Commissioner's office. Wayne Richardson asked how the mail slots were sorted. Answer was they are sorted by Director Name.

Rick Swain asked what are the time restraints and how quickly would it be scheduled. The Chair answered it would again depend upon acting within the rules - there is the 15 day period - there is the 40 day period. What he would look for would be 2 weeks. It would be a continuance.

#### QUESTIONS OF THE APPEALANT:

Jon Osgood asked Attorney Moeckel if he knew any estimate of the damage suffered for each week they are delayed - and any estimate of the damage suffered IF they are required to put sprinklers in the homes - and if done, would that not raise the value of the homes? Attorney Modigliani objected on the basis that the dispositive MOTION and all the facts have not all be cumulated. Jon Osgood withdrew his question.

Chair asked if the Board members have asked all the testimony in this matter to make a decision on the MOTION TO CONTINUE? The Board has the right to continue with the case. Tedd Evans made the **MOTION** to continue to June 22 at 10:00 am. **MOTION** was duly **SECONDED**. Discussion: Jerry Tepe said he will not be available. Marta said that the Fire Chief from the Town of Webster will not be available. Chairman said we will try to continue this to June 20<sup>th</sup> but if needed will continue it to a date beyond the 26<sup>th</sup>. Attorney Modigliani asked for a recess to check calendars. Chairman declared the Board in recess. Tedd Evans **AMENDED** his **MOTION** to 10:00 on June 29<sup>th</sup> for the continuance of this hearing. The **SECOND** to this **AMENDED MOTION** accepted the amendment. Vote taken was **Unanimous** in favor. No objections were stated from either party to the date and time.

#### ADJOURNMENT

**PUBLIC HEARING CONTINUED TO: June 29th**